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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAR 25 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
Amendment of the Commission's Rules )  
To Permit Flexible Service Offerings )  
in the Commercial Mobile Radio Services )

WT Docket No. 96-6

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**REPLY OF COX ENTERPRISES, INC.**

Cox Enterprises, Inc. ("Cox"), by its attorneys, hereby submits its reply comments on the Commission's Notice of Proposed Rulemaking in the above captioned rulemaking proceeding.<sup>1/</sup>

The Commission is well aware of Cox's often-stated intention to use personal communications service ("PCS") to provide local telecommunications services in competition with incumbent local exchange carriers ("LECs").<sup>2/</sup> While Cox believes that the Commission's current rules and policies are a sufficient basis for PCS or other broadband commercial mobile radio service ("CMRS") providers to offer "fixed"-type services in competition with incumbent LECs, Cox supports those commenters that ask the Commission to confirm a flexible approach

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<sup>1/</sup> See Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services, Notice of Proposed Rulemaking, WT Docket No. 96-6 (released January 25, 1996) ("Notice").

<sup>2/</sup> See, e.g., Price Cap Performance Review for Local Exchange Carriers, Treatment of Operator Services Under Price Cap Regulation, Revisions to Price Cap Rules for AT&T, Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124, and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197, Comments of Cox Enterprises, Inc. (filed December 11, 1995) at 2-3 (citing Cox's early policy position that PCS, if properly encouraged, could provide wireless competition to the LEC monopoly local loop).

for CMRS provision of all types of fixed and mobile communications services.<sup>3/</sup> Cox does, however, agree with the concerns raised by Comcast Corporation that incumbent LECs not use any rules developed in this docket to extricate their wireline networks from state regulatory oversight or from the market-opening requirements in Section 271 of the Telecommunications Act of 1996.<sup>4/</sup> It is essential that the Commission make plain that incumbent LEC wireline networks cannot be "integrated" with LEC in-region CMRS networks in order to escape landline regulation.<sup>5/</sup> The Commission should not attempt to define a term like "wireless local loop" because, as the comments demonstrate, any definition would create unnecessary regulatory disputes and needlessly inhibit the ability of CMRS providers to compete with the LECs.<sup>6/</sup>

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3/ See, e.g., Comments of SBC Communications, Inc. at 1 ("CMRS providers should have the flexibility to use the spectrum however they choose"); Comments of AT&T Corp. at 1 (the Commission should clarify that "CMRS providers may provide fixed services with their wireless spectrum"); Comments of 360° Communications Company at 2 ("360 supports the proposal to change existing rules to allow all CMRS providers to offer all types of fixed wireless services").

4/ See Comments of Comcast Corporation at 7.

5/ Further, in order to best promote competition, in-region LEC CMRS providers should not be integrated with LEC wireline networks. See, e.g., Letter to William E. Kennard, Esquire, General Counsel, Federal Communications Commission from Werner K. Hartenberger, Dow, Lohnes & Albertson, on behalf of AirTouch Communications, Inc., Comcast Corporation and Cox Enterprises, Inc. (dated January 18, 1996). The Commission must examine the issue of in-region LEC CMRS structural separation in a notice and comment rulemaking proceeding. Id. It cannot simply ignore the issue or eliminate the cellular structural separation rule as the LECs ask. See, e.g., U S West Comments at 5-6.

6/ See, e.g., Comments of SR Telecom, Inc. at 6 (definition of "wireless local loop" could result in the restrictive development of technologies); Notice of Public Rule Making Response, COMAV, LLC & The Telemarc Group, Inc. at 8 (the proposed definition of "wireless local loop" has a fundamental fault because it does not take into account that aggregation or switching takes place in the cell site and may also, depending on the evolution of the technology, take place in the end user terminal).

Some commenters claim that CMRS intrastate "fixed" services should be regulated by the states as the equivalent of landline services.<sup>7/</sup> Not only does this proposal vitiate the Commission's obvious intent to encourage widespread CMRS deployment, but it ignores the very limited, non-substantive and conditional jurisdiction the states do have over CMRS operations. Congress has explicitly removed state jurisdiction over CMRS until such time that CMRS becomes a replacement for wireline telephone exchange service for a "substantial portion" of the wireline telephone exchange service within each state.<sup>8/</sup> As Cox has explained, the Commission presently has exclusive jurisdiction over all aspects of CMRS because Congress wanted CMRS to be regulated exclusively on the national level.<sup>9/</sup> If Congress's goal of a seamless, nationwide network of CMRS providers is to be realized, the Commission must follow Congress's directive and retain jurisdiction over all aspects of CMRS.<sup>10/</sup>

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7/ See, e.g., NYNEX Comments at 3.

8/ In the 1993 Budget Act Congress removed state jurisdiction over CMRS absent FCC approval. See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §§ 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392 (1993) ("1993 Budget Act"). The states retain jurisdiction to regulate "terms and conditions" relating to CMRS service, meaning that the states may establish standards for "such matters as customer billing information and practices and billing disputes and other consumer protection matters." See H.R. Rep. No. 103-111, 103rd Cong., 1st Sess., at 260.

9/ See, e.g., Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking, CC Docket No. 95-185, Comments of Cox Enterprises, Inc. (filed March 4, 1996) at 35-47. Similarly, nothing in the Telecommunications Act of 1996 affects the Commission's jurisdiction over CMRS. Id.

10/ After CMRS becomes equivalent to the landline local loop, but not before, the states can petition the Commission for jurisdiction over CMRS. See 47 U.S.C. § 332(c)(3)(A)(ii) (once CMRS becomes a replacement for landline telephone services for a substantial portion of the telephone landline exchange service within a state, a state may petition the Commission for authority to regulate CMRS if competition for local loop service is not in place).

LEC arguments that CMRS provision of "fixed" services under federal CMRS regulation will create an "inefficient" dual regulatory regime should be dismissed.<sup>11/</sup> LECs need no protection to "compete fairly with CMRS providers," as GTE claims.<sup>12/</sup> Rather, it is the CMRS providers that need special consideration reflected in Commission policies when an incumbent LEC is also a CMRS provider. Until non-LEC affiliated CMRS providers have fair and reasonable access to the ubiquitous incumbent LEC networks according to a mutual compensation interconnection policy<sup>13/</sup> with true service provider number portability,<sup>14/</sup> no argument can be made that incumbent LECs and CMRS providers should operate under the same regulations. Indeed, the Commission itself has recently stated its intention to review the competitive safeguards and rules applicable to in-region LEC CMRS.<sup>15/</sup> However, because the Commission has not yet adopted long overdue safeguards for in-region LEC CMRS, it must make sure that any rules developed in this docket do not permit the LECs to use their landline networks and CMRS affiliate relationships in a manner harmful to emerging CMRS competition.

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<sup>11/</sup> See, e.g., Comments of Bell Atlantic at 3-5.

<sup>12/</sup> Comments of GTE Service Corporation at 3.

<sup>13/</sup> Cox believes that "bill and keep" is the appropriate policy to adopt for LEC-CMRS interconnection, at least on an interim basis to allow PCS to establish itself as a local telecommunications competitor. See Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking, CC Docket No. 95-185, Comments of Cox Enterprises, Inc. (filed March 4, 1996) at 2.

<sup>14/</sup> See, e.g., In the Matter of Telephone Number Portability, CC Docket No. 95-116, RM 8535, Comments of Cox Enterprises, Inc. et. al. (as part of the Ad Hoc Coalition of Competitive Common Carriers) (filed September 12, 1995).

<sup>15/</sup> See Amendment of the Commission's Rules to Establish New Personal Communications Services; Pacific Bell, Nevada Bell, Pacific Bell Mobile Services and Pacific Telesis Mobile Services' Plan of Non-Structural Safeguards Against Cross-Subsidy and Discrimination, Order, Docket No. 90-314 (released February 27, 1996) at 6 ¶ 11.

Public policy concerns about protecting consumers and promoting competition require that incumbent monopoly common carriers and their affiliates operate under different regulatory standards than new market entrants.<sup>16/</sup> The Telecommunications Act of 1996 also makes important regulatory distinctions between incumbent LECs and other telecommunications carriers. When incumbent LECs lose control over essential bottleneck facilities and CMRS becomes a substantial competitor for fixed services the states have a statutory mechanism to ask the Commission to re-visit the issue of federal jurisdiction over CMRS. Until that time the Commission should stay with its present

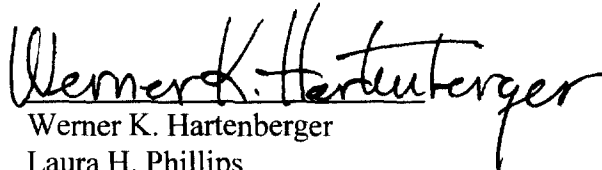
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<sup>16/</sup> See, e.g., Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, FCC 95-427 (released October 23, 1995) at 3-4 ¶ 3 ("Between 1979 and 1985, the Commission conducted the Competitive Carrier proceeding, in which it examined how its regulations should be adapted to reflect and promote the increasing competition in telecommunications markets. A major purpose of the Competitive Carrier rulemaking was to reduce or eliminate the application of economic regulation to new competitive entrants, since such entrants would improve market performance as rivals to AT&T and other incumbent, monopoly providers of telecommunications services and should not be viewed as potential monopolists requiring the same degree of economic regulation.") (footnotes omitted).

course of promoting CMRS as a viable local loop competitor through its exercise of federal jurisdiction over all aspects of CMRS.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Werner K. Hartenberger". The signature is written in a cursive style with a horizontal line underneath the name.

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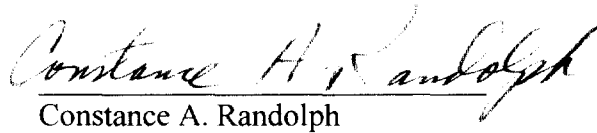
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